

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Bray International, Inc.,

Civil No. 05-1618 (PAM/AJB)

Plaintiff,

v.

ORDER

Raymond A. Collings and
Jon K. Heidinger,

Defendants.

This matter is before the Court on Plaintiff Bray International Inc.'s request for permission to file a Motion for Reconsideration of the Court's June 23, 2006 Order, which dismissed the common law fraud claim against Defendants Raymond A. Collings and Jon K. Heidinger. For the reasons that follow, the Court grants the request.

On April 14, 2006, Defendants moved for judgment on the pleadings with respect to the common law fraud claim. Because the parties submitted evidence outside of the pleadings, the Court considered the motion as one for summary judgment. See Fed. R. Civ. P. 12(c). However, discovery has not yet closed, and the dispositive motion deadline is set for October 1, 2006.

The Court determined that the fraud claim failed as a matter of law because Bray had failed to allege who made a false statement. (June 23, 2006 Order at 5.) In addition, the Court found that the evidence on which Bray relied on did not support a fraud claim against Defendants. (Id.) The Court noted that Arne Watson, a former TIS president, lodged the most damaging allegation. In particular, Watland averred that Defendant Collings remarked that Watland could modify purchase orders submitted to Bray.

Bray now contends that it possesses evidence that Defendant Collings directly instructed a former sales department head to create “dummy” purchase orders to submit to Bray. Unlike the previously submitted affidavits, this evidence purportedly shows that Collings specifically instructed the department head to submit a false statement to Bray. This seemingly meets the standard set forth in Avery v. Solargizer International, Inc., 427 N.W.2d 675, 681 (Minn. Ct. App. 1988). Based on this evidence and given the procedural posture of this case, the Court finds that compelling circumstances warrant reconsideration of the June 23, 2006 Order. Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff Bray International, Inc.’s request for permission to file a Motion for Reconsideration relating solely to its fraud allegations against Defendant Raymond A. Collings is **GRANTED**;
2. Bray will file and serve its Motion and supporting memorandum by July 31, 2006;
3. Defendant Raymond A. Collings will file and serve his responsive memorandum by August 14, 2006; and
4. Bray will file and serve its reply memorandum by August 21, 2006.

The Court will decide the Motion for Reconsideration on submission of the papers without oral argument.

Dated: July 18, 2006

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge